

**MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL**

In this Endangered Species Act lawsuit, Plaintiff Joyce Rowley seeks removal of two Asian elephants, Ruth and Emily, due to the squalid and cramped living conditions at the Defendant's Buttonwood Park Zoo.

The Defendant houses two older elephants in a 35-year-old concrete barn. During zoo operating hours, the elephants typically are allowed out into a yard for exhibition. Rowley has used the visibility of the two elephants to document their well-being.

Rowley also acquires clinical records, keeper logs and consultant reports from the Defendant City under Mass. Gen. Law §66, to follow their health care.

Looking at the records in combination with daily observations and photo documentation, Rowley is able to determine when the elephants have been injured and whether they are treated for it. It also assists in determining whether the treatment is harmful, whether it is appropriate for the health problem, and whether it meets the standards of the Animal Welfare Act.

Most recently, Asian elephant Ruth has been kept from view for the past thirteen days (December 15-28). However, the clinical records do not indicate a reason for her confinement (Exhibit 1, December 1-15, 2021 clinical records). Further, Ruth's clinical records over the past year indicate 26 occasions where her condition changed overnight and she sustained bruising, lameness, or other

injuries as described below.

1. Eye injuries. On at least two occasions Ruth appeared blind in her left eye but it was not identified in the records. When injuries are identified, as when Ruth suffered an eye injury in her right eye in September 2021, the explanation of how it happened in the clinical records was that it was due to a "foreign body." At the same time, both of Ruth's cheeks (zygomatic arches) were abraded, with tissue missing. (Exhibit 2, Clinical records, September 4-5, 2021 and Exhibit 3, Dated photos of Ruth's face). The record indicates her wounds were packed with sand, but since elephants dust wounds intuitively to heal, it's unlikely the sand caused the injury. It's also unlikely sand caused the eye injury, since elephants close their eyes when dusting.

2. Bruising, lesions, and swelling. The records show "Bruise on right ear" on January 24, "new micro-abrasions to tail" on April 20, a new foot lesion on May 5, "D2 of left foot swollen today" on May 9, new face lesions on June 10, the cheeks and eye injury on September 4-5, and "face lesions raw today" on September 16.

3. Lameness and feet bruising.

As reported in the clinical records for 2021, Ruth was "moving more slowly and swaying again" on June 1, "very lame today" on August 16, had "bruising on D3 of left foot" (Digit 3 is next to digit 2 which is missing toe bones) on August 21, "moving slow (sic)...new red, fragile tissue on left foot" on September 16, "moving

slower, D2 bruised...painful on palpitation" on October 23, "not eating, holding left foot up" on November 8, "Right foot bruising on D5" and had a "3rd defect left rear foot," on December 1, presented a "Right foot D5 nail [now] cracked completely" on December 2, "Left foot proliferative overnight" and "micro-abscesses ruptured" on December 7, "Left foot [proliferative] tissue increased overnight" on December 8 and 9, and on December 19 was "deliberate with left foot."

4. Overnight colic, behavior change. Several behavioral changes also happened overnight: January 19--"colic," June 21--"colic", "agitated" and "not eating browse," July 27--"didn't lie down last night," September 16--"colic, moving slow" (along with "red, fragile tissue" on left foot and "raw" face lesions), October 3--"doesn't want to go in chute" (where *chute* refers to the narrow metal elephant restraining device), and October 26 and November 8-- "picky about food" and "not eating" respectively. While colic may have a variety of causes, this complaint cites daily observations of Ruth being prevented from eating for hours at a time. That, in combination with fear behaviors--not lying down, refusal to go into the restraining device, and injuries, points to an external cause.

As these injuries are occurring overnight, access to view Ruth in her night stall via remote camera is necessary to evaluate how they are occurring.

Asian elephant Emily likewise has been seen with injuries that appear

overnight. Her clinical records are absent any mention of the bruising seen on her face, and her loss of her left tusch (tusk). She has at times darkened skin around her eyes and front of her trunk. It's unclear how these injuries occur due to the lack of information.

But regardless of how these injuries are sustained, Plaintiff is concerned that the dilapidated barn has become increasingly unsafe for the elephants.

RELIEF

Plaintiff seeks daily access to both elephants, overnight access via remote camera, immediate notification of a sudden change in circumstances for either elephant such as collapse or death, and, should either elephant die, attendance at the necropsy.

Although this case has just begun, evidence of harm and harassment as defined in 50 CFR §17.3 may disappear if one or both elephants die.

Respectfully submitted,

/s/Joyce Rowley
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